

REPORTERS COMMITTEE

FOR FREEDOM OF THE PRESS

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TONY MAURO
American Lawyer Media, ret.

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Slate

ANDREA MITCHELL
NBC News

CAROL ROSENBERG
The New York Times

PAUL STEIGER
ProPublica

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By email

September 16, 2020

Sheriff Alex Villanueva
Los Angeles County Sheriff's Department
211 W. Temple St.
Los Angeles, CA 90012

Lt. John Satterfield
Sheriff's Information Bureau
Los Angeles County Sheriff's Department
211 W. Temple St.
Los Angeles, CA 90012

Re: Arrest of journalist Josie Huang

Dear Sheriff Villanueva:

The undersigned are members of state and local news media, national news organizations with properties in California, wire services, and nonprofit groups that protect the rights of journalists to gather and report news. We write to ask the Department to take immediate steps to prevent another incident like the arrest of Josie Huang—a reporter for KPCC, a National Public Radio member station owned and operated by Southern California Public Radio—who was violently arrested by your deputies and charged with obstruction in the lawful course of her reporting.

We urge that the citation against Ms. Huang be dismissed. The public interest would also be served by an accounting from your Department explaining why she was arrested and why your Department stated that Ms. Huang did not identify herself as a journalist when multiple video recordings show her doing so loudly and repeatedly.

The right to record police activity in public is clearly established, and an officer who violates that First Amendment freedom—especially through the use of force—enjoys no legal immunity. *See, e.g., Fordyce v. City of Seattle*, 55 F.3d 436, 439 (9th Cir. 1995); *Adkins v. Limtiaco*, 537 F. App'x 721, 722 (9th Cir. 2013). As the U.S. Department of Justice has explained, this right to record is “not only required by the Constitution” but also is “consistent with our fundamental notions of liberty.” *See Statement of Interest of the United States, Sharp v. Baltimore City Police Dep't*, No. 1:11-cv-02888-BEL (D. Md. filed Jan. 10, 2012).

Journalists and other citizens deprived of that liberty are entitled to relief under 42 U.S.C. § 1983, which permits those whose federal rights are violated under color of law to sue the official responsible. *See, e.g., Fordyce*, 55 F.3d at 438–39.

And as the California law for which Ms. Huang was cited and detained for more than five hours makes clear, the exercise of the right to record cannot amount to obstruction. *See* Cal. Penal Code § 148(g) (West 2016).

Based on multiple recordings of the incident, it appears that the Department's arrest of Ms. Huang violated these clearly established First Amendment rights. As numerous outlets have now reported, Ms. Huang was arrested near St. Francis Medical Center, where she had been covering your press conference about the ambush shooting of two deputies earlier that day in Compton. *See, e.g.,* Tim Elfrink, *L.A. Deputies Tackled and Arrested a Reporter. Her Videos Contradict Their Claims About the Incident*, Wash. Post (Sept. 14, 2020), <https://wapo.st/3hwUhNO>. On the streets outside the hospital, Ms. Huang covered the ensuing protest and began recording the arrest of a protester, who, according to your Department, had not complied with an order to disperse. *Id.*

In [the recordings](#), deputies shout at Ms. Huang to “back up” and, without giving her time to withdraw, grab and throw her to the ground. She can be heard clearly and repeatedly identifying herself as a journalist who works for KPCC; in separate videos, including one taken by [OnScene.tv](#), Ms. Huang's press lanyard and badge are visible. The Department nevertheless claimed that Ms. Huang “[did not identify herself as press](#)” and continued to direct reporters to that statement in response to questions about Ms. Huang's video evidence. *See* Allyson Waller & Marie Fazio, *California Deputies Shot in Ambush Are Expected to Recover, Authorities Say*, N.Y. Times (Sept. 14, 2020), <https://nyti.ms/3c2quLR>. A deputy cited Ms. Huang for violation of California Penal Code section 148(a)(1), obstructing a peace officer. *Id.*

The recordings show that Ms. Huang was clearly identifiable as a journalist, identified herself as such, and promptly attempted to comply with directives from the deputies to back up.

The Department has stated that Ms. Huang “later admitted she did not have [proper press credentials on her person](#).” But whether a journalist exercising her right to report and record has been formally credentialed by the jurisdiction that she is covering and that arrests her is, under the First Amendment, not the question here.

If an officer knows or has reason to know that a reporter is a reporter, and if that reporter complies with reasonable law enforcement requests, First Amendment protections apply. *Cf. Index Newspapers LLC v. City of Portland*, No. 3:20-cv-1035, slip op. at 58 (D. Or. Aug. 20, 2020), *appeal docketed*, No. 20-35739 (9th Cir. Aug. 21, 2020) (enjoining law enforcement from “arresting, threatening to arrest, or using physical force directed against any person whom they know *or reasonably should know* is a Journalist”) (emphasis added). A press badge, including a work badge from a press organization like the one Ms. Huang was visibly carrying during her arrest, is one sign that an individual may be a journalist; so is shouting “I'm a reporter,” and “I'm with KPCC” seven times, as Ms. Huang can be heard doing on the videos of her arrest.

Attached please find a letter from an earlier Reporters Committee coalition—sent this summer to officials across the state of California—laying out steps every jurisdiction

should take immediately to protect reporters engaged in lawful newsgathering. To support the strong public interest in local coverage of law enforcement activity, including in the coverage of the recent shootings in Compton, we urge that the Los Angeles County Sheriff's Department implement these steps in Los Angeles County.

We urge you, too, to cooperate fully with the L.A. County Inspector General's investigation of the incident involving Ms. Huang. *See* Alex Wigglesworth, *L.A. County Deputies Arrest Radio Reporter Covering Protest Outside Hospital*, L.A. Times (Sep. 13, 2020), <https://lat.ms/35C2j5G>. And, again, we urge that the obstruction citation against Ms. Huang be dismissed.

Please do not hesitate to contact Bruce Brown, Executive Director of the Reporters Committee, with any questions at bbrown@rcfp.org.

Sincerely,

The Reporters Committee
for Freedom of the Press

Asian American Journalists Association
The Associated Press
California Broadcasters Association
California News Publishers Association
CalMatters
Committee to Protect Journalists
Cox Media Group
Daily Breeze
The E.W. Scripps Company, on behalf of
 KGTV, San Diego; KERO, Bakersfield;
 and KSBY, San Luis Obispo
East Bay Times
Embarcadero Media
First Amendment Coalition
First Amendment Project
Free Press
The Fresno Bee
Gannett Co., Inc.
Greater Los Angeles Pro Chapter of the
 Society of Professional Journalists
Hearst Corporation
Inland Valley Daily Bulletin
Investigative Reporters and Editors
KPBS
KQED Inc.
Long Beach Press-Telegram
Los Angeles Daily News

The National Press Club
National Press Club Journalism Institute
National Press Photographers
 Association
Native American Journalists Association
The News Leaders Association
The NewsGuild - CWA
Nexstar Broadcasting, Inc./KTLA
Online News Association
The Orange County Register
Pacific Media Workers Guild (The
 NewsGuild-CWA Local 39521)
Pasadena Star-News
PEN America
The Press-Enterprise
Radio Television Digital News Association
Redlands Daily Facts
Reporters Without Borders
Reuters News & Media Inc.
The Sacramento Bee
SAG-AFTRA
San Gabriel Valley Tribune
The (San Luis Obispo) Tribune
The Sun
Sinclair Broadcast Group, Inc.
Society of Environmental Journalists
Society of Professional Journalists

Los Angeles Times Communications LLC
The Media Institute
Merced Sun-Star
The Mercury News
The Modesto Bee
Mother Jones
National Association of Black Journalists
National Association of Broadcasters
National Association of Hispanic Journalists

Society of Professional Journalists-
NorCal Freedom of Information
Committee
Southern California Public Radio, on
behalf of KPCC and LAist
Student Press Law Center
Tully Center for Free Speech
Voice of OC
Whittier Daily News

cc: The Honorable Jackie Lacey
District Attorney, County of Los Angeles

The Honorable Kathryn Barger
Board of Supervisors, County of Los Angeles

The Honorable Janice Hahn
Board of Supervisors, County of Los Angeles

The Honorable Sheila Kuehl
Board of Supervisors, County of Los Angeles

The Honorable Mark Ridley-Thomas
Board of Supervisors, County of Los Angeles

The Honorable Hilda L. Solis
Board of Supervisors, County of Los Angeles

Mary Wickham
County Counsel, County of Los Angeles

ATTACHMENT

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By email

July 8, 2020

The Honorable Gavin Newsom
Governor, State of California
1303 10th Street, Suite 1173
Sacramento, CA 95814

Re: Law enforcement targeting journalists during protests

Dear Governor Newsom:

The undersigned are members of state and local news media, national news organizations with properties in California, wire services, and non-profit groups that protect the rights of journalists to gather and report news. We write to ask that you urge mayors and police chiefs across your state to implement immediate, concrete steps to prevent further attacks by law enforcement on journalists in California, as have occurred repeatedly during the police response to the George Floyd protests.

These incidents occurred as, across the country, police arrested, detained, and threatened journalists, and physically assaulted them with rubber and foam bullets, pepper spray and pellets, paintball rounds, tear gas, batons, and fists. In the cases of arrests and assaults that we are aware of in California, there are indications, many strong, that officers knew the journalist was a member of the press.

Law enforcement officers do not have legal immunity when they violate clearly established rights under the First Amendment. The right of the press to document police activity is foundational to our democracy and has long been recognized and protected by the courts. Beyond, however, the Constitution and the law, any targeting of reporters for doing their jobs—keeping the public informed during an extraordinary period of civil unrest—is beyond the pale in a free society.

The challenges that officers face in policing during times of civil protest do not supersede any of the rights guaranteed by the First Amendment, and moments of crisis demand that we protect the bedrock American ideal of a free press even more zealously.

As Supervisor Matt Haney of the San Francisco Board of Supervisors said, “When we start detaining journalists, that goes into the realm of an authoritarian police state.” Supervisor Haney is correct, as was the Los Angeles County Board of Supervisors in unanimously passing a resolution opposing the targeted harassment, arrest, or assault of journalists

documenting police activity; as was Mayor Sam Liccardo of San Jose in calling for an investigation into the “very troubling” detention of two journalists; and as were Mayor Robert Garcia and Chief of Police Robert Luna of Long Beach in apologizing to and investigating the shooting with a rubber bullet of KPCC journalist Adolfo Guzman-Lopez.

When an officer knows a journalist is a journalist, just one arrest or assault is a profound and clear violation of the First Amendment.

In California, among other incidents:

- Barbara Davidson, a Pulitzer Prize-winning photojournalist, was covering a protest in Los Angeles when a police officer told her to move. She showed him her credentials, he responded he did not care, she again identified herself as press, and, as she began to walk away, the officer shoved her causing her to trip and hit her head on a fire hydrant;
- Cerise Castle, a reporter for National Public Radio’s Santa Monica affiliate, KCRW, was shot with a rubber bullet while holding her press badge above her head. She said she was shot by an LAPD officer with whom she had just locked eyes;
- Katie Nielsen, a reporter with KPIX 5 News, was detained by officers in Oakland, while repeatedly identifying herself as press and with visible credentials. The detention was brief but interrupted her reporting on a peaceful protest organized by Oakland Tech High School students;
- Leonardo Castañeda, a reporter with the San Jose Mercury News, was zip-tied and detained by police in San Francisco;
- Jintak Han, a photographer and reporter with the University of California at Los Angeles’s student newspaper, the Daily Bruin, was shot at with rubber bullets as he tried to return to his car after covering protests. He was wearing his press pass, a white helmet, a vest emblazoned with “PRESS,” and was carrying three cameras; and
- Adolfo Guzman-Lopez, a clearly identifiable radio journalist with KPCC in Los Angeles, was shot in the throat with a rubber bullet while covering protests in Long Beach, leaving a bloody red welt. “I felt it was a direct hit to my throat,” the radio reporter said.

The Reporters Committee for Freedom of the Press has documented at least 13 other incidents in California, which, along with those noted above, occurred in La Mesa, Long Beach, Los Angeles, Oakland, San Francisco, San Jose, and Santa Monica. The U.S. Press Freedom Tracker has confirmed more than 90 incidents of arrest or assault by

the police around the country, and the Reporters Committee and the Tracker are investigating more than 300 others.

We appreciate your call to include journalists in the development of new statewide standards for policing protests. Officers on the ground must understand that gathering news and recording police activities are not crimes, and that journalists who are complying with reasonable law enforcement directions when covering civil unrest are protected by the First Amendment. In incidents documented in California, the journalists were clearly identified as such and indisputably in compliance with the law.

Additionally, officers should recognize that training for journalists and documentarians who cover protests or civil unrest provides guidance on how to interact with law enforcement. They know to comply with an order to move, they will not resist arrest, and they will identify themselves as a member of the news media. At the same time, officers properly trained in crowd control should know that an identifiable journalist may not be arrested or assaulted.

We also urge you to inform all city officials across the state that they should exempt the news media from any future curfew order, to the extent they issue one. Commanders on the ground must be required to instruct all officers of the exemption.

To be clear, a curfew order that fails to provide an exemption for members of the press would violate the First Amendment, and gives law enforcement a potent tool to silence reporting through assaults or arrests of journalists. *Cf. Bantam Books, Inc. v. Sullivan*, 372 U.S. 58, 70 (1963) (“Any system of prior restraint of expression comes before this Court bearing a heavy presumption against its constitutional validity.”). Furthermore, that arrest or detention of a reporter during a curfew would itself violate the First Amendment. *See id.*

A. The right to report on police activities is clearly established and officers have no immunity when they directly target reporters covering protests.

The right of the press to report on government activity has long been protected by the First Amendment. *See, e.g., Smith v. Daily Mail Publ’g Co.*, 443 U.S. 97, 103 (1979) (“[I]f a newspaper lawfully obtains truthful information about a matter of public significance then state officials may not constitutionally punish publication of the information, absent a need to further a state interest of the highest order.”); *First Nat’l Bank of Bos. v. Bellotti*, 435 U.S. 765, 783 (1978) (“[T]he First Amendment goes beyond protection of the press and the self-expression of individuals to prohibit government from limiting the stock of information from which members of the public may draw.”).

News reporting on police conduct serves the crucial First Amendment interest in promoting the “free discussion of governmental affairs.” *Mills v. Alabama*, 384 U.S. 214, 218 (1966).

The right to record police activity, by the press and public, has been held repeatedly to be “clearly established” by many courts around the country. Therefore, a police officer or official who violates that right, especially through the use of force, cannot claim legal immunity. See *Fordyce v. City of Seattle*, 55 F.3d 436, 439 (9th Cir. 1995); see also *Glik v. Cunniffe*, 655 F.3d 78, 83 (1st Cir. 2011) (citing cases); *Toole v. Atlanta*, 798 Fed. Appx. 381, 388 (11th Cir. 2019) (finding right to record police at protest clearly established); see also *American Civil Liberties Union of Illinois v. Alvarez*, 679 F.3d 583, 595 (7th Cir. 2012) (finding eavesdropping statute barring recording of police activity in public violated First Amendment).

The Department of Justice has taken the position that this right to record law enforcement is a crucial First Amendment protection that should apply across the country. See Statement of Interest of the United States, *Sharp v. Baltimore City Police Dep’t*, No. 1:11-cv-02888-BEL (D. Md. filed Jan. 10, 2012) (“[The right to record is] not only required by the Constitution . . . [it is] consistent with our fundamental notions of liberty, promote[s] the accountability of our governmental officers, and instill[s] public confidence in the police officers who serve us daily.”); see also Statement of Interest of the United States, *Garcia v. Montgomery County*, No. 8:12-cv-03592-JFM (D. Md. filed March 4, 2013) (arguing that discretionary charges like disorderly conduct or disturbing the peace should be viewed skeptically when based on recording police activity).

Journalists, photojournalists, and documentarians deprived of that right are entitled to relief under 42 U.S.C. § 1983, which permits individuals whose rights are violated under color of law to sue the government official responsible. See, e.g., *Redmond v. San Jose Police Dep’t*, No. 14-cv-02345, 2017 WL 5495977, at *11-12 (N.D. Cal. Nov. 16, 2017); see also Cal. Penal Code § 69(b) (West 2016) (“The fact that a person takes a photograph or makes an audio or video recording of an executive officer, while the officer is in a public place or the person taking the photograph or making the recording is in a place he or she has the right to be, does not constitute, in and of itself, [obstructing or resisting an officer].”).

While law enforcement may impose reasonable restrictions on newsgathering to prevent undue interference with legitimate police work, journalists who comply with those restrictions—who stand at a fair remove from any police activity, who obey orders to disperse, and who conspicuously identify themselves as journalists—may not be subject to arrest or physical attack, the quintessential “unreasonable” restriction.

Though physical restraints on newsgathering, such as those which we have seen in California in recent weeks, are thankfully rare and therefore seldom litigated, there is little question that a court would find a “clearly established” First Amendment right of journalists to be free from physical assaults or arrests.

B. Cities across California should immediately implement protocols to protect reporters and ensure the public is informed.

Accordingly, every jurisdiction in California should:

- Instruct officers and staff that the arrest or physical attack of a journalist who is compliant with reasonable police orders is a clearly established First Amendment violation;
- Take swift action to discipline any officer who is found to have arrested or assaulted a journalist engaged in newsgathering;
- Inform officers that they themselves could be subject to legal liability for violating these rights;
- Require officers to prominently display their badge numbers, names, and other identifying information;
- Prohibit officers policing protests from turning off body-worn cameras and mandate that recordings begin before an officer interacts with the public;
- Ensure that crowd control tactics are appropriate and proportional, and are designed to prevent collateral harm to journalists covering protests;
- Continue to exempt members of the news media from mobility restrictions, including, and especially, curfews; and
- Release all information about arrests of or physical interactions with the press to the public to allow it to evaluate the legitimacy of police conduct, and guarantee that disciplinary records can be promptly released through public records requests.

In late May and early June, given the early waves of protests in Minnesota and New York City, the Reporters Committee coordinated letters to those jurisdictions with international, national, state, and local signatories to highlight the breadth and depth of concern around the country and globally over assaults and arrests on journalists.

By way of illustration, please find attached the letter to officials in New York City, signed by 126 news organizations and press freedom advocates. The signatories to the New York City letter continue to share great concern over arrests or police assaults on journalists, as have been documented in California and elsewhere.

Please do not hesitate to contact Bruce Brown, Executive Director of the Reporters Committee, with any questions at bbrown@rcfp.org.

Sincerely,

The Reporters Committee
for Freedom of the Press

ABC, Inc., on behalf of KABC-TV, Los Angeles; KGO-TV, San Francisco; KFSN-TV, Fresno; and ABC News
The Associated Press
Berkeleyside Inc.
California Broadcasters Association
California News Publishers Association
CalMatters
CBS Television Stations, on behalf of KCBS-TV/KCAL-TV, Los Angeles; KPIX-TV/KBCW-TV, San Francisco; and KMAX-TV/KOVR-TV, Sacramento
The Center for Investigative Reporting (d/b/a Reveal)
Committee to Protect Journalists
The E.W. Scripps Company
Embarcadero Media
First Amendment Coalition
Fox Television Stations, LLC
Freedom of the Press Foundation
Gannett Co., Inc.
Hearst Corporation
Hollywood Foreign Press Association
International Documentary Association
KCRW
KPBS
KQED Inc.
Los Angeles Times Communications LLC
The McClatchy Company
The Media Institute
Media News Group Inc.
Mother Jones

MPA - The Association of Magazine Media
National Association of Broadcasters
National Newspaper Association
The National Press Club
National Press Club Journalism Institute
National Press Photographers Association
NBCUniversal Media, LLC
News Media Alliance
The NewsGuild - CWA
Nexstar Broadcasting, Inc.
Online News Association
Pacific Media Workers Guild (The NewsGuild-Communications Workers of America Local 39521, AFL-CIO)
PEN America
Radio Television Digital News Association
Reporters Without Borders USA
Reuters News & Media Inc.
The San Diego Union-Tribune, LLC
Sinclair Broadcast Group, Inc.
Society of Environmental Journalists
Society of Professional Journalists – Northern California Freedom of Information Committee
Sonoma Media Investments, LLC
Southern California Public Radio (d/b/a KPCC/LAist)
Student Press Law Center
TEGNA Inc., on behalf of KXTV-TV/ABC10, Sacramento; KFMB-TV/CBS8, San Diego
Tully Center for Free Speech

cc: The United States Congressional Delegation from California

The Honorable Mark Arapostathis
Mayor, City of La Mesa

Chief Walt Vasquez
Chief of Police, City of La Mesa

The Honorable Robert Garcia
Mayor, City of Long Beach

Chief Robert Luna
Chief of Police, City of Long Beach

The Honorable Eric Garcetti
Mayor, City of Los Angeles

Chief Michael R. Moore
Chief of Police, City of Los Angeles

Inspector General Mark Smith
Office of the Inspector General, Los Angeles Police Commission

The Honorable Libby Schaaf
Mayor, City of Oakland

Chief Susan E. Manheimer
Interim Chief of Police, City of Oakland

The Honorable London Breed
Mayor, City of San Francisco

Chief William Scott
Chief of Police, City of San Francisco

The Honorable Sam Liccardo
Mayor, City of San Jose

Chief Edgardo Garcia
Chief of Police, City of San Jose

The Honorable Kevin McKeown
Mayor, City of Santa Monica

Chief Cynthia Renaud
Chief of Police, City of Santa Monica

ATTACHMENT TO
JULY 8 LETTER

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By email

June 6, 2020

The Honorable Bill de Blasio
Mayor, City of New York
City Hall
New York, NY 10007

Commissioner Dermot F. Shea
New York City Police Department
1 Police Plaza
New York, NY 10038

Re: Law enforcement targeting journalists during protests

Dear Mayor de Blasio and Commissioner Shea:

As members of the news media and organizations that protect the rights of journalists to gather and report news, the undersigned write to ask that you take immediate, concrete steps to end the series of police arrests and attacks on credentialed and clearly identifiable journalists in New York City in recent days. These incidents occur as, across the country, police have arrested, detained, and threatened journalists, and have physically assaulted them with rubber bullets, pepper spray, tear gas, batons, and fists.

In the cases of threats, arrests, and assaults that we are aware of in New York City, there are indications, many strong, that officers knew the journalist was a member of the press.

Law enforcement officers do not have legal immunity when they violate clearly established rights under the First Amendment. The right of the press to document police activity is foundational to our democracy and has long been recognized and protected by the courts. Beyond, however, the Constitution and the law, any targeting of reporters for doing their jobs—keeping the public informed during an extraordinary period of civil unrest—is beyond the pale in a free society.

The challenges that officers face in policing during times of civil protest do not supersede any of the rights guaranteed by the First Amendment, and moments of crisis demand that we protect the bedrock American ideal of a free press even more zealously.

As Governor Cuomo rightly tweeted on June 3, “A free press is the lifeblood of democracy. Now more than ever, it is critical that reporters & photographers can safely document protests without fear of harm or targeting.” Governor Cuomo confirmed that journalists are “essential—and they must be able to do their jobs. We all depend on them.” Governor

Cuomo is correct. When an officer knows a journalist is a journalist, just one arrest or assault is a profound and clear violation of the First Amendment.

In New York City alone, among other incidents:

- Brendan McDermid, a Reuters photographer, was assaulted by police while taking pictures of arrests at a protest in downtown Brooklyn. McDermid was wearing a vest marked “PRESS,” was carrying a professional camera, and was clearly displaying his press credentials. An officer asked him to move, he complied, and without provocation, the officer lunged at McDermid with a baton, knocked him down, kicked him in the leg, beat his helmet with the baton, and laughed;
- Chris Mathias, a senior reporter on assignment for HuffPost, was violently taken into custody by New York Police Department officers, even though he identified himself as a reporter and was wearing a clearly visible press pass;
- Writer Keith Boykin, while freelancing, said that as he was taking videos and photos of protests, and after informing NYPD officers he was with the press, he was arrested, and only released hours later;
- Robert Bumsted and Maye-E Wong, a videographer and photographer for the Associated Press wearing identification, were surrounded and shoved by NYPD officers, who also shouted expletives at the journalists, while the journalists attempted to explain the press was exempt from curfew. Bumsted and Wong were forced to leave the scene entirely;
- Tyler Blint-Welsh, a reporter for the Wall Street Journal, was hit in the face multiple times with riot shields and pushed to the ground by NYPD, even though his NYPD-issued press badge was clearly visible;
- A Newsday multimedia producer with a press pass taking video of the protests in lower Manhattan was struck with a baton in the back and pushed down, hitting a metal fence. He had on a bike helmet, which cracked. He complained to an officer about what happened, who walked away.

The Reporters Committee for Freedom of the Press has documented at least four other incidents in New York City where police detained or assaulted journalists who appear to have been clearly identified as members of the news media and were not physically located among protesters. The U.S. Press Freedom Tracker has confirmed almost thirty incidents of arrest or assault by the police around the country, and the Reporters Committee and the Tracker are investigating several hundred more.

Officers on the ground must understand that gathering news and recording police activities are not crimes, and that journalists who are complying with reasonable law enforcement directions when covering civil unrest are protected by the First Amendment.

In incidents captured on camera in New York City, the journalists were clearly identified as such and indisputably in compliance with the law.

Additionally, officers should recognize that training for journalists and documentarians who cover protests or civil unrest provides guidance on how to interact with law enforcement. They know to comply with an order to move, they will not resist arrest, and they will identify themselves as a member of the news media. At the same time, officers properly trained in crowd control should know that an identifiable journalist may not be arrested or assaulted.

We also strongly urge you to affirmatively order all commanders to instruct their officers that the news media is exempt from curfew orders in New York City, as was clearly stated in the “Finest Message” of June 1.

A general curfew order that fails to provide an exemption for *all* members of the press would violate the First Amendment, and gives law enforcement a potent tool to silence reporting through assaults or arrests of journalists, as we have seen over the past several days. *Cf. Bantam Books, Inc. v. Sullivan*, 372 U.S. 58, 70 (1963) (“Any system of prior restraint of expression comes before this Court bearing a heavy presumption against its constitutional validity.”). Furthermore, that arrest or detention of a reporter during a curfew would itself violate the First Amendment. *See id.*

We appreciate Mayor de Blasio’s tweet early on June 5 confirming that media personnel are essential and exempt from the curfew, and his pledge to “get NYPD to fix this immediately,” but that message *must* filter down to the officers on the ground.

A. The right to report on police activities is clearly established and officers have no immunity when they directly target reporters covering protests.

The right of the press to document police activities in public has long been protected by the First Amendment. *See Iacobucci v. Boulter*, 193 F.3d 14, 25 (1st Cir. 1999) (“Because Iacobucci’s [journalistic] activities were peaceful, not performed in derogation of any law, and done in the exercise of his First Amendment rights [police] lacked the authority to stop them.”). News reporting on police conduct serves the crucial First Amendment interest in promoting the “free discussion of governmental affairs.” *Mills v. Alabama*, 384 U.S. 214, 218 (1966).

The right to record police activity, by the press and public, has been held repeatedly to be “clearly established” by many courts around the country. Therefore, a police officer or official who violates that right, especially through the use of force, cannot claim legal immunity. *See Glik v. Cunniffe*, 655 F.3d 78, 83 (1st Cir. 2011) (citing cases); *see also American Civil Liberties Union of Illinois v. Alvarez*, 679 F.3d 583, 595 (7th Cir. 2012) (finding eavesdropping statute barring recording of police activity in public violated First Amendment).

The Department of Justice has taken the position that this right to record law enforcement is a crucial First Amendment protection that should apply across the

country. See Statement of Interest of the United States, *Sharp v. Baltimore City Police Dep't*, No. 1:11-cv-02888-BEL (D. Md. filed Jan. 10, 2012) (“[The right to record is] not only required by the Constitution . . . [it is] consistent with our fundamental notions of liberty, promote[s] the accountability of our governmental officers, and instill[s] public confidence in the police officers who serve us daily.”); see also Statement of Interest of the United States, *Garcia v. Montgomery County*, No. 8:12-cv-03592-JFM (D. Md. filed March 4, 2013) (arguing that discretionary charges like disorderly conduct or disturbing the peace should be viewed skeptically when based on recording police activity).

Journalists, photojournalists, and documentarians deprived of that right are entitled to relief under 42 U.S.C. § 1983, which permits individuals whose rights are violated under color of law to sue the government official responsible. See *Higginbotham v. New York*, 105 F. Supp. 3d 369, 379-80 (S.D.N.Y. 2015) (finding reporter forcibly arrested covering protest stated clearly established First Amendment right-to-record claim sufficient to defeat qualified immunity); see also *Terebesi v. Torreso*, 764 F.3d 217, 231 (2d Cir. 2014) (“Even if this Court has not explicitly held a course of conduct to be unconstitutional, *we may nonetheless treat the law as clearly established* if decisions from this and other circuits *clearly foreshadow a particular ruling on the issue.*”) (emphasis added and internal quotations and citations omitted).

While law enforcement may impose reasonable restrictions on newsgathering to prevent undue interference with legitimate police work, journalists who comply with those restrictions—who stand at a fair remove from any police activity, who obey orders to disperse, and who conspicuously identify themselves as journalists—may not be subject to arrest or physical attack, the quintessential “unreasonable” restriction.

Though physical restraints on newsgathering, such as those which we have seen in New York City in recent days, are thankfully rare and therefore seldom litigated, there is little question that a court would find a “clearly established” First Amendment right of journalists to be free from arrest and the baton.

B. New York City should immediately implement protocols to protect reporters and ensure the public is informed.

Accordingly, we urge you to:

- Instruct your officers and staff that the arrest or physical attack of a journalist who is compliant with reasonable police orders is a clearly established First Amendment violation;
- Take swift action to discipline any officer who is found to have arrested or assaulted a journalist engaged in newsgathering;
- Inform your officers that they themselves could be subject to legal liability for violating these rights;

- Ensure that crowd control tactics are appropriate and proportional, and are designed to prevent collateral harm to journalists covering the protests;
- Continue to exempt members of the news media from mobility restrictions, including, and especially, curfews; and
- Release all information about arrests of or physical interactions with the press to the public to allow it to evaluate the legitimacy of police conduct.

Please do not hesitate to contact Bruce Brown, Executive Director of the Reporters Committee, with any questions at bbrown@rcfp.org.

Sincerely,

The Reporters Committee
for Freedom of the Press

American Broadcasting Companies, Inc.
on behalf of ABC News and WABC-TV, New York
Advance Publications, Inc.
ALM Media, LLC
America's Newspapers
American Journalism Project
Article 19
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Association of Alternative Newsmedia
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Bloomberg News
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cc: The Honorable Andrew Cuomo
Governor, State of New York

The Honorable Letitia James
Attorney General, State of New York

The Honorable Cyrus R. Vance, Jr.
District Attorney of New York County, Borough of Manhattan

The Honorable Darcel D. Clark
District Attorney of Bronx County, Borough of the Bronx

The Honorable Eric Gonzalez
District Attorney of Kings County, Borough of Brooklyn

The Honorable Melinda Katz
District Attorney of Queens County, Borough of Queens

The Honorable Michael E. McMahon
District Attorney of Richmond County, Borough of Staten Island